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DEPARTMENT OF STATE

22 CFR Part 42

RIN: 1400-AD39

[Public Notice 8332]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: The Department of State amends its regulations to eliminate the use of Form OF-224 as a method of recording an alien's entitlement to an immigrant visa classification. Due to the availability of automated systems at all immigrant visa-issuing posts, this entitlement is now recorded automatically, rendering the use of Form OF-224 unnecessary and obsolete.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Taylor W. Beaumont, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 2401 E Street, N.W., Room L-603D, Washington, D.C. 20520-0106, (202)663-2951, email (BeaumontTW@state.gov).

SUPPLEMENTARY INFORMATION:

This rule eliminates the use of Form OF-224, Immigrant Visa Control Card, as a method of recording an alien's entitlement to an immigrant visa classification. Section

203(e)(3) of the Immigration and Nationality Act (INA) requires the Department of State to prescribe regulations to maintain waiting lists of applicants for immigrant visas. In accordance with this provision, 22 CFR 42.52 was amended in 1988 to require consular officers to record that an alien is entitled to an immigrant visa classification, either on Form OF-224 or through the automated system in use at selected posts. As all immigrant-visa issuing posts now use an automated system, consular officers no longer use Form OF-224, making that part of the rule obsolete..

REGULATORY FINDINGS

A. Administrative Procedure Act

The Department is publishing this rule as a final rule based on its determination that this rulemaking relates to a matter relating to agency management, in that this rulemaking involves non-substantive changes to procedures. The Department does not expect any public comment. Since the rule is exempt from the provisions of 5 U.S.C. 553, it will be effective immediately.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business.

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department has reviewed this regulation and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

D. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121.

E. Executive Order 12866: Regulatory Planning and Review

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. Consistent with Executive Order 12866, the Department does not consider the rule to be an significant action as defined by the Executive Order.

F. Executive Order 13563: Improving Regulation and Regulatory Review

The Department of State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

G. Executive Orders 12372 and 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

H. Executive Order 12988: Civil Justice Reform

The Department has reviewed the rule in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

I. Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 42

Immigration, Passports and Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR Part 42 is amended as follows:

PART 42 -- VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277; Pub L. 108-449; 112 Stat. 2681-795 through 2681-801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901-14954. Pub. L. 106-279.

2. Section 42.52 is amended by revising paragraph (c)(1) to read as follows:

§ 42.52 Post records of visa applications.

* * * * *

(c) * * *

(1) A record that an alien is entitled to an immigrant visa classification shall be made whenever the consular officer is satisfied—or receives evidence—that the alien is within the criteria set forth in paragraph (b) of this section.

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April 11, 2013

(Date)

Janice L. Jacobs,
Assistant Secretary for Consular Affairs,
Department of State.

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